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IN THE MATTER OF THE FORMAL
COMPLAINT OF QWEST CORPORATION
AGAINST ARIZONA DIALTONE, INC. TO
ENFORCE ITS INTERCONNECTION
AGREEMENT

DOCKET NO. T-03608A-07-0694
T-01051B-07-0694

QWEST CORPORATION'S
RESPONSE TO MOTION FOR
ORDER REGARDING BACKBILLING
CALCULATIONS AND
DISCONNECTION OF SERVICES

Qwest Corporation ("Qwest") responds to Arizona Dialtone, Inc.'s Motion for Order Regarding Qwest Corporation's Backbilling Calculations and Threatened Disconnection of Services ("Motion"), filed March 12, 2009. The Arizona Corporation Commission ("Commission") should deny the Motion in part, and hold the Motion in abeyance in part, for the reasons stated below.

Through its Motion, and under the guise of "seeking information" about Qwest's bill, Arizona Dialtone, Inc. ("AZDT") continues evasive maneuvers to avoid complying with the FCC order known as the Triennial Review Remand Order ("TRRO").¹ More immediately, by

¹ *In the Matter of Unbundled Access to Network Elements, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Order on Remand*, 20 F.C.C.R. 2533 (2005) ("TRRO").

1 contesting the entire back billing, AZDT is effectively denying the decision of the Commission
2 that authorized Qwest to backbill. As the Commission is aware, the Commission authorized
3 Qwest to issue back bills to AZDT by the Commission Decision No. 70460. Backbilling was
4 necessary because, as the Commission found (in part):

5 Allowing AZDT to avoid a true-up for the services received would
6 effectively approve AZDT's having obtained UNE-P services at TELRIC prices
7 for years after the FCC forbade that in the TRRO. Such a result would frustrate
8 the FCC's purposes in adopting the TRRO and would reward AZDT for its
9 noncompliance.²

10 Likewise, granting AZDT's Motion will reward AZDT for what amounts to continued
11 noncompliance.

12 There are two backbills that Qwest has issued under the authority of Commission
13 Decision No. 70460. One is the backbill for the transition period that the FCC established for
14 implementation of the TRRO. The other is the monthly installment billing for the post-transition
15 period backbill. These two billings will be addressed separately.

16 Backbill For the Transition Period

17 The backbill for the transition period is by far the largest portion of AZDT's current back
18 balance. It is \$99,386 of the total due, the total being \$122,199.21. Two things are particularly
19 important to note in regard to the transition period backbilling.

20 First, while AZDT has appealed the Commission's decision about backbilling of the post-
21 transition amounts, AZDT has not appealed the Commission's decision authorizing the transition
22 period back bill. Thus, the only dispute noticed by AZDT regarding this part of the bill involves
23 the calculation. If the Commission finds, as it should for the reasons stated below, that AZDT's
24 motion fails with respect to the transition period billing, it may do so without concern that the
25

26 ² Decision No. 70460, p. 43, lines 14-19. (Emphasis added).

1 Court will reverse the Commission.

2 Second, the calculation of the transition period bill is simple. All that is required is to bill
3 \$1 for each line in place, each month. That calculation has already been provided in the
4 Complaint proceeding before the Commission, as Confidential Exhibit D. In fact, AZDT's
5 counsel refers to Exhibit D in the very letter in which he asks for line counts, by month. It is
6 difficult to imagine what other information is necessary for AZDT to evaluate the transition
7 period bill.

8 Apparently AZDT would have the Commission believe that it doesn't have any idea how
9 many UNE-P lines it subscribed to from Qwest during the transition period. That simply is not
10 believable. AZDT ordered the services, paid a bill to Qwest every month for the services, and
11 billed its customers for every one of the lines. AZDT assuredly has the data it needs to validate
12 the bill from its own business records. And, it has the data Qwest provided in Confidential
13 Exhibit D to compare.

14 Yet, AZDT has not alleged any facts, and stated no theory that calls the validity of the
15 bill into question, in whole or in part. It is incumbent upon AZDT to explain what it disputes
16 and why. As noted, AZDT has appealed the Commission's decision regarding the post transition
17 billing to the U.S. District Court.³ AZDT's failure to explain its dispute was commented on by
18 the Court in a recent hearing:

19 THE COURT: What's your dispute in 25 words or less:

20 Mr. Hotchkiss: We don't agree with the amount that is being charged per line, that
21 is, the quantity of the services provided.

22 THE COURT: And that's not decided in [Decision No. 70460]?

23 Mr. Hotchkiss: No, it is not.

24 THE COURT: And how is that subject to fair dispute if you place orders with
25 them for a certain number lines? One would think that would be a readily ascertainable
26 objective fact not subject to fair dispute. Of course, I could be wrong, but is sure looks

³ Arizona Dialtone, Inc. vs. Arizona Corporation Commission et al., No. CV 08-2007-PHX-NVW.

1 that way from the outside.

2 Mr. Hotchkiss: I would agree it should be readily ascertainable beyond dispute.
3 What I can tell you is my client disputes their calculations.

4 THE COURT: Okay, that's not very persuasive.

5 Mr. Hotchkiss: Okay.

6 The COURT: The fact they don't want to pay and want to dispute doesn't tell me
7 what the dispute is or show[] me there's any substantial basis to it.

8 Mr. Hotchkiss: Your Honor, quite frankly, I'm not prepared today to get into the
9 specifics of that, because we haven't prepared that part of our case because it hasn't even
10 gone through the administrative process yet.⁴

11 Now, 15 months after AZDT received Complaint Exhibit D laying out month by month how
12 much was due for the Transition Period, over 7 months after the Commission ruled AZDT is
13 liable for back billing, over 2 months after the Court was perplexed by AZDT's failure to
14 quantify its dispute, and over a month after receiving the actual back billing invoice, AZDT still
15 has not identified what it disputes about either bill. Indeed, AZDT did not even issue its
16 unexplained notice of dispute until after the bill had become delinquent,⁵ despite proactive
17 efforts by Qwest to explain the components of the bill and to point out to AZDT that the bills
18 were coming due.⁶ AZDT has been exceedingly lax in bringing its dispute, if a *bona fide* dispute
19 exists at all. The Commission should deny AZDT's Motion because AZDT fails to show any
20 basis for the Motion.

21 AZDT's dispute and nonpayment of the entire amount of the transition period backbill,
22 without explanation of rationale of the dispute, is contrary to the ICA, as Qwest pointed out to
23 AZDT in Qwest's February 20, 2009 letter to Mr. Hotchkiss.⁷ Section 5.4.4 of the ICA requires
24 that AZDT in good faith timely pay undisputed amounts and provide an explanation of why the

25 ⁴ Arizona Dialtone, Inc., vs. Arizona Corporation Commission, et al., Case No. CV 08-2007-
26 PHX-NVW, U.S. Dist. Ct. Ariz, Scheduling Conference Transcript: 8-9, January 15, 2009.

⁵ Thomas Bade's letter, February 27, 2009, attached as Exhibit F to AZDT's Motion.

⁶ Norman Curtright's letter, February 2, 2009, attached as Exhibit C to AZDT's Motion.

⁷ Norman Curtright's letter, February 20, 2009, attached as Exhibit E to AZDT's Motion.

1 remaining amounts are disputed.⁸

2 The ICA has the force and effect of law.⁹ Therefore, Section 5.4.4 of the ICA controls
3 the process for billing and for resolution of billing disputes, not AZDT's counsel's "expectation
4 that the specific dollar amount of the backbillings would be resolved in the Complaint
5 proceeding once the Corporation Commission ruled in the Arbitration proceeding[.]"¹⁰ Further,
6 it should be noted that the ICA's provisions are quite similar to the Commission's rule for how
7 billing disputes are handled for retail customers. That rule is set forth in A.A.C. R14-2-510(B).
8 Rule 510(B)(1) requires that the customer "shall pay the undisputed portion of the bill." AZDT
9 has paid nothing.

10 AZDT does not even state a hypothetical reason for why it suspects that Qwest's bill is
11 not properly calculated. Under the totality of these circumstances, AZDT's "billing dispute" is
12 nothing more than a delay tactic, forestalling compliance with the Commission's order.

13 For the reasons stated above, AZDT's Motion should be denied with regard to the
14 backbill for the transition period. AZDT has failed to comply with the ICA, and has failed to
15 pay. AZDT should be ordered to pay the transition period backbill immediately.

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20 ⁸ Section 5.4.4 of the parties' ICA provides as follows:

21 Should CLEC or Qwest dispute, in good faith, any portion of the monthly billing
22 under this Agreement, the Parties will notify each other in writing within thirty
23 (30) calendar days of the receipt of such billing, identifying the amount, reason
24 and rationale of such dispute. At a minimum, CLEC and Qwest shall pay all
25 undisputed amounts due. Both CLEC and Qwest agree to expedite the
investigation of any disputed amounts in an effort to resolve and settle the dispute
prior to initiating any other rights or remedies.

26 ⁹ *Pacific Bell v. Pac-West Telecomm, Inc.*, 326 F.3d 1114, 1127 (9th Cir. 2003).

¹⁰ Glenn Hotchkiss's February 13, 2009 letter, p. 1, attached as Exhibit D to AZDT's Motion.

1 Post Transition Period Backbill

2 Qwest has notified AZDT of the total amount of the backbill for the post-transition
3 period. However, since Decision No. 70460 permits AZDT to pay its liability in 29 equal
4 installments without interest, Qwest has made clear that the current amount due is \$22,813.21.
5 Much the same arguments apply with respect to Qwest's backbilling of the post-transition period
6 as are stated above. Under the ICA, in order to dispute a bill AZDT must identify the amount in
7 dispute, explain the rationale, and pay the undisputed amounts on time. AZDT has the burden of
8 stating the dispute, and has the wherewithal to do so. AZDT ordered the circuits in question,
9 paid the monthly bills for the circuits, and sold those same circuits to its customers. AZDT
10 knows the resale rate, and can do the math. AZDT's dispute notice is insufficient, and if it
11 intends to claim that nothing is owed whatsoever, its position is incredible. Though AZDT had
12 months to seek information from Qwest about how Qwest made its calculation, AZDT did not
13 ask for that information until several days after the bill's past due date. For these reasons, ample
14 reason exists to deny AZDT's Motion with regard to the post-transition period back billing.

15 The backbill calculation for the post-transition period is a little more complex, because
16 the features that were ordered on each UNE-P line that has since been disconnected by AZDT
17 have to be reconstructed or an estimate made.¹¹ Qwest is willing to discuss with AZDT how
18 Qwest calculates the features cost for the backbilling, but notes that it is still incumbent upon
19 AZDT to make its calculation, and to pay the amount that it does not dispute, in good faith.

20 As noted, the concept of back-billing for the post-transition period is before the Court.
21 The Court stated that a decision on that may be expected by May or June, during which time the
22 post-transition back-billing dispute, if one exists, can be addressed.

23
24 _____
25 ¹¹ The features question does not arise for the transition period back billing, which simply
26 required billing \$1 per line. With regard to the post-transition period, the most substantial part of
the charges relate not to features ordered, but to the rate for the line itself, times the number of
lines, which are all known factors.

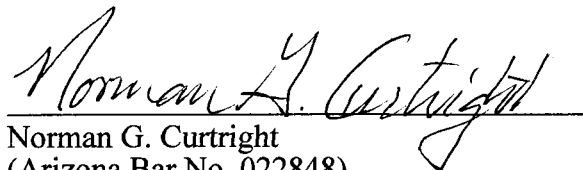
1 Proposed Resolution of Motion

2 In light of the foregoing, Qwest's response and proposal for resolution of the motion may
3 be summarized as follows:

- 4 1. AZDT's Motion should be considered separately for the transition period backbill
5 and the post-transition period backbill.
- 6 2. The Motion should be denied for the transition period for the reasons stated
7 above. AZDT must pay the \$99,386 immediately and Qwest is authorized to
8 terminate all current services if AZDT does not pay that sum, without further
9 order of the Commission. When AZDT makes payments it must identify which
10 bills are to be credited for the payment.
- 11 3. The Motion should be held in abeyance with respect to the post-transition period
12 backbill: AZDT should be ordered to file within 10 days a detailed explanation of
13 its dispute and to pay such portion of the \$22, 813 installment (and each following
14 installment) that it in good faith determines is not in dispute. To aid in that
15 process, the parties shall meet and confer by telephone regarding how each
16 considers the post-transition period calculation should be made. Qwest will not
17 terminate services for non-payment of the post-transition period backbill before
18 the Commission establishes a procedural order addressing the revised statement of
19 dispute and addressing whether Qwest may terminate service for nonpayment in
20 the post-transition period backbill dispute.

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RESPECTFULLY SUBMITTED, this 13th day of March, 2009.

QWEST CORPORATION



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7 Copy of the foregoing hand delivered
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